IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO.313/01, 314/01, 315/01, 316/01, 317/01, 322/01, 364/01 & 279/2002.

WRIT PETITION NO. 313/01

Smt. Sangeeta V. Dhamasker,
144(F), Suvidha Housing Society,
Gantamorod, Aquem-Baixo,
Post Navelim, Salcete, Goa. ..... Petitioner.

V/s.

1. Government of Goa,
   (through the Chief Secretary),
   Secretariat, Panaji, Goa.)

2. The Directorate of Education,
   Government of Goa, Panaji, Goa.

3. The Secretary,
   Department of Education,
   Panaji, Goa.

4. The Principal,
   Smt. Chandrabhaga Tukoba Naik
   Higher Secondary School,
   Curchorem, Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. Leena Dharwadkar, Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 314/01

Shri Gaji Y. Desai,
M.E.S. Higher Secondary,
Zuarinagar, Vasco-da-Gama, Goa. ..... Petitioner.

V/s.

1. Government of Goa,
   (through the Chief Secretary),

Secretariat, Panaji, Goa.)
2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3.The Secretary,
Department of Education,
Panaji, Goa.

4. The Principal,
Murgaon Education Society's Higher
Secondary School of Vocational Stream,
Zuarinagar, Vasco-da-Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. Rakhi Chodankar, Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 315/01

Shri Arun S.P. Velguencar,
residing at A-5, Vithal Bhavan,
Bansai-Curchorem, Goa ..... Petitioner.

V/s.

1. Government of Goa,
(through the Chief Secretary),
Secretariat, Panaji, Goa.)

2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3. The Secretary,
Department of Education,
Panaji, Goa.

4. The Principal,
Guardian Angel Higher Secondary
School, Curchorem, Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. G. Bhonsule,

Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 316/01

Shri Gurudas H. Naik,
residing at House No.84, Khaprebhat,
Zoidav vado, Nachinola,
P.O. Aldona, Bardez, Goa ..... Petitioner.

V/s.

1. Government of Goa,
(through the Chief Secretary),
Secretariat, Panaji, Goa.)

2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3. The Secretary,
Department of Education,
Panaji, Goa.

4. The Principal,
Fr. Agnel Higher Secondary School,
(Junior College), Pilar, Goa ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. G. Bhonsule,
Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 317/01

Shri Joaquim S. Fernandes,
residing at 163, Cammarbhat,
St. Jose de Areal, Salcete, Goa. ..... Petitioner.

V/s.

1. Government of Goa,
(through the Chief Secretary),
Secretariat, Panaji, Goa.)
2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3. The Secretary,
   Department of Education,
   Panaji, Goa.

4. The Principal, Guardian Angel
   Higher Secondary School,
   Curchorem, Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. Rakhi Chodankar, Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 322/01

1. Nandan Hegde Desai,
   r/o. Opposite Police Station,
   Quepem, Goa.

2. Atmaram Morajkar,
   C/o. Suvarna Electronics,
   P.B. No.11, Survarna
   Bandekar Bldg.,
   Vasco-da-Gama, Goa. ..... Petitioners.

V/s.

1. Government of Goa,
   through its Chief Secretary,
   Secretariat, Panaji, Goa.)

2. The Director,
   Directorate of Education,
   Government of Goa, Panaji, Goa.

3. Murgaon Education Society's
   Higher Secondary School,
   through its Principals,
   Zuarinagar, Goa. ..... Respondents.

Mr. C. A. Coutinho, Advocate for the petitioners.

Mr. S. S. Kantak, Advocate General with Ms. Leena

Dharwadkar, Addl. Govt. Advocate for respondents No.1 and 2.

WRIT PETITION NO. 364/01

Miss Kalpana D. Karwarkar,
House No.66, Abade Faria Road,
Margao, Goa 403 601. ..... Petitioner.

V/s.

1. Government of Goa,
(through the Chief Secretary),
Secretariat, Panaji, Goa.)

2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3. The Secretary,
Department of Education,
Panaji, Goa.

4. The Principal,
Guardian Angel
Higher Secondary School,
Curchorem, Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. Leena Dharwadkar, Addl. Govt. Advocate for respondents No.1 to 3.

WRIT PETITION NO. 279/2002

Shri Vivek E. Rodrigues,
House No.777, Murgrumpoi,
Verna, Salcete, Goa. ..... Petitioner.

V/s.

1. Government of Goa,
(through the Chief Secretary),
Secretariat, Panaji, Goa.)

2. The Directorate of Education,
Government of Goa, Panaji, Goa.

3. The Secretary,
   Department of Education,
   Panaji, Goa.

4. The Principal,
   Fr. Agnel Multipurpose Higher
   Secondary School,
   Verna, Salcete, Goa. ..... Respondents.

Mr. V. Menezes, Advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Mr. Shaikh Vahidulla, Addl. Govt. Advocate for respondents No.1 to 3.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
18th April, 2006.

Date of pronouncing Judgment
5th June, 2006.

J U D G M E N T : (Per A.P. LAVANDE, J.)

All these petitions are disposed of by common Judgment since they involve identical issues of law and the facts involved in the writ petitions are almost identical. We have heard Mr. Menezes, learned Counsel for the petitioners in Writ Petitions No. 313/01, 314/01, 315/01, 316/01, 317/01, 364/01 and 279/2001; Mr. Coutinho, learned Counsel for the petitioners in Writ Petition No.322/01 and Mr. Kantak, learned Advocate General on behalf of the State and the Director of

Education. The managements of different Schools have chosen not to put in appearance either to oppose or to support the petitions.

2. Briefly, the case of the petitioners is as follows :

The petitioners are full time Grade I Teachers in Higher Secondary Schools run by different managements in Goa. Some of the petitioners were appointed during the academic year 1989-90 and some of the petitioners were appointed during the academic year 1990-91. The appointments of these teachers were made pursuant to the Circular dated 30.6.1988 issued by the Director of Education which prescribed qualifications for full time and part time teachers for vocational subjects in the higher secondary schools. According to the petitioners, the pay scale prescribed by the said circular for Grade I Full Time Teacher was Rs.1640-2900. The petitioners were appointed pursuant to the advertisement issued by the managements of different schools. Although the pay scale for the said post was Rs.1640-2900, the Director of Education approved the scale of Rs.1400-2600. The petitioners made several representations to the Director of Education claiming pay scale of Rs.1640-2900, first of such representations, on behalf of the petitioners, was made on 1.9.1990 and the last

representation was made on 21.02.2000. Inspite of the representations made, the petitioners were not given the pay scale of Rs.1640-2900. The appointments continued from year to year and the petitioners were given increments in the pay scale of Rs.1400-2600.

By Circular dated 13.8.1990, the Director of Education informed the managements of different schools that certain anomalies had crept up in the pay scale of Grade I Teachers for Vocational Courses and, therefore, an exercise was being done taking into consideration the scales prevailing in the State of Goa with reference to the qualifications etc., to rationalise the pay scale and the managements would be informed about the same in due course of time. By letter dated 20.11.1990, addressed to the Principals of Higher Secondary Schools having vocational streams, the Director of Education informed that the pay scales for Full Time Grade I Teachers would be fixed at Rs.1640-2900, while the pay scales for full time teachers in lower scale would be fixed at Rs.1400-2600. The petitioners have further stated that three teachers working with Murgaon Education Society's Higher Secondary School of Vocational Stream, Zuarinagar, had filed Writ Petition No.61/91 claiming pay scale of Rs.1640-2900 along with the consequential monetary benefits and/or differences. By Judgment dated

11.2.1992, this Court allowed the petition and granted pay scale of Rs.1640-2900 along with the consequential monetary benefits with effect from November, 1990. The said judgment was not challenged by the State of Goa and, therefore, it has become final. It is further the case of the petitioners that one Ajay Jadhav, a Full Time Teacher in Grade I (Vocational Stream) employed with Murgaon Education Society's Higher Secondary School of Vocational Stream, Zuarinagar who was given pay scale of Rs.1400-2600 had filed Writ Petition No.257/1995 in this Court claiming pay scale of Rs.1640-2900 with effect from the date of his appointment as the Director of Education had refused to extend the said pay scale to him. This Court, by Judgment dated 5.3.1998, dismissed the petition. However, Special Leave Petition No.5043/99 filed by Ajay Jadhav was allowed by the Apex Court and the Apex Court issued directions to the State of Goa and the Director of Education to give Mr. Jadhav pay scale of Rs.1640-2900 with effect from 14.6.1990 within two months from the date of Judgment. The petitioners, thereafter, also made representation to the Government requesting extension of the pay scale of Rs.1640-2900 from the date of their respective appointments. Inspite of such representations, the petitioners were not given the pay scale of Rs.1640-2900. Therefore, the petitioners have filed the above

petitions seeking quashing and setting aside of the letters issued to the petitioners at the time of their initial appointments fixing their pay scale of Rs.1400-2900. The petitioners have further sought writ in the nature of mandamus commanding the respondents to extend to the petitioners the pay scale of Rs.1640-2900 with effect from dates of their initial appointments. The petitions have been mainly filed on the basis of the Judgments given by this Court in Writ Petition No.61/91 and on the basis of the Judgment given by the Apex Court in case of Ajay Jadhav (supra).

3. The petitions have been resisted by filing common affidavit by the Director of Education. No affidavit has been filed on behalf of the managements. The petitions have been opposed on several grounds. Firstly, according to the respondents, the petitions have been filed after a considerable period of time and the petitions are liable to be dismissed only on the ground of unexplained delay and laches. According to the respondents, the petitioners having acquiesced and waived their right, are not entitled to claim higher pay scale, after a considerable length of time. Secondly, the respondents have contended that the petitioners were appointed purely on temporary basis and their services have been regularised in

terms of Order dated 10.6.2002, thereby making them eligible for service benefits and, therefore, the petitioners are not entitled to any relief from this Court.

4. On merits, it is the case of the respondents that the vocational education in Goa was introduced pursuant to a Scheme of Central Government which had laid down guidelines and also procedure for grants to voluntary organisations, condition of grants etc. In terms of the said scheme, pay scales and the salary patterns have been fixed by the State Government. In vocational stream, there are different courses, technical and non-technical and the payments of the teachers are depending upon the requirement and their pay scales are Rs.1400-2600 and 1640-2900. It is further the case of the respondents that as per the said scheme, there is no provision of Grade I Teacher, but the scheme only provides for full time teacher and part time teacher, however, loosely, nomenclature of Teacher Grade I is being used in case of the vocational teachers irrespective of their qualifications and scales of pay. According to the respondents, all the petitioners were appointed pursuant to the advertisements in which the higher pay scale was not prescribed and in respect of each of these petitioners, the Director of Education had granted approval for

temporary appointments in the pay scale of Rs.1400-2600. According to the respondents, in terms of the Scheme of National Council of Education, Research and Training (NCERT), the pay scales stipulated were for two types of teachers – teachers having Post Graduate Degree in pay scale of Rs.1640-2900 and the teachers having lower qualification in the pay scale of Rs.1400-2600. Under the Goa School Education Act, the qualifications prescribed for Grade I Teachers are, (i) Masters Degree in the subject, (ii) a Degree in Education/Teaching failing which 2nd Class Masters Degree in the subject and should obtain B.Ed. Degree within 5 years. Since the petitioners were not holding Post Graduate Degree in non-technical subjects and not having qualifications required for Grade I Teachers under Rule 78 of Goa School Education Rules, the appointments of each of the petitioners were approved with the pay scale of Rs.1400-2600 and accordingly, they were given appointments. At no point of time, the petitioners were paid pay scale of Rs.1640-2900. In so far as Circular dated 30.6.1988 is concerned, since there was some doubt about the scales considering the qualifications prescribed by the NCERT, the matter was referred to NCERT, which informed the Education Department that the State Government had to decide about the pay scales keeping in view the prevalent pay structures for

similar categories of the teachers in the State. Thereafter, the Government examined the matter and found that some of the schools had misinterpreted the Circular dated 30.6.1988 and, therefore, decided to rationalise the pay scales by setting right the anomalies. Accordingly, circulars dated 13.8.1990 and 20.11.1990 were issued clarifying the ambiguities about the pay scales referred to in the Circular dated 30.6.1988. In terms of the Circular dated 20.11.1990, the pay scales for Grade I Full Time Teachers and Full Time Teachers in lower scale were prescribed. The pay scale for Full Time Teachers in lower scale was fixed at Rs.1400-2600 and below as per their qualifications as stated in the Annexure to Circular dated 20.11.1990. According to the respondents, the petitioners are not having qualifications of Grade I Full Time Teacher and therefore, they are entitled to pay scale of Full Time Teacher in lower scale which was Rs.1400-2600. According to the respondents, the managements of various schools have no authority to fix the pay scale without approval of the Director of Education. In so far as Judgment passed by this Court in Writ Petition No.61/91 is concerned, it is the case of the respondents that the petitioners in the said writ petition were erroneously given higher pay scale of Rs.1640-2900 and since the High Court had directed that the petitioners should be given the pay scale of Rs.1640-

2900, the same was given to them and this scale should be treated as personal scale to them. According to the respondents, the petitioners are not entitled to take benefit of the said Judgment as the case of the petitioners is entirely different. Similarly, the Judgment of the Apex Court in Ajay Jadhav's case is not applicable to the case of any of the petitioners. According to the respondents, the scales given to Shri Bharat Naik and two others were given wrongly and therefore, the Government cannot be directed to perpetuate the wrong or to continue with illegality. Further, it is the case of the respondents, that there are about 31 teachers in private aided schools in the State of Goa who are identically placed like the petitioners and drawing similar scales. Similarly, there are about 9 teachers in Government Schools who are drawing the scales like that of the petitioners. In the event, the petitioners are granted benefit of the pay scale of Rs. 1640-2900, all other teachers who are similarly situated will have to be given this scale which will be a financial burden on the State. Although, initially the vocational education scheme which was implemented in Goa, sharing pattern was 75 % of the Central Government and 25 % of the State Government, from the year 1997-98, the entire financial liability is borne by the State Government. According to the respondents, there is no

discrimination and the petitioners are not entitled to the pay scale of Rs.1640-2900 claimed by them.

5. Mr. Menezes, the learned Counsel appearing on behalf of all the petitioners except the petitioners in Writ Petition No.322/01, submitted that the petitioners were appointed as Grade I Teachers pursuant to the Circular dated 30th June, 1988 issued by the Director of Education and as such, the Government is bound by the said Circular. He further submitted that in terms of the said Circular, the pay scale prescribed for the Grade I Teacher is Rs. 1640-2900 and therefore, the petitioners are entitled to the said scale and the action of the respondents in refusing the said pay scale and fixing them in the pay scale of Rs.1400-2600 is arbitrary and illegal. He further submitted that the facts in Writ Petition No.61/91 filed by Bharat Naik and two others which was disposed of by this Court by Judgment dated 11th February, 1992 granting the petitioners pay scale of Rs.1640-2900 and the facts in each of the present petitions are identical and, therefore the respondents are bound to grant to the petitioners pay scale of Rs.1640-2900 and therefore, the action of the respondents in refusing to pay the scale to the petitioners cannot be sustained. He further submitted that the said Judgment having become

final, the respondents are now estopped from urging that the petitioners are not entitled to the pay scale of Rs.1640-2900. Placing reliance on the Judgment dated 14.9.1999 of the Apex Court in C.A. 5043/1996; **Shri Ajay Jadhav vs. Government of Goa and others.,** the learned Counsel submitted that the petitioners who are similarly placed as Ajay Jadhav are also entitled to the pay scale of Rs.1640-2900 as was granted by the Apex Court to Ajay Jadhav by the said Judgment. In so far as delay and laches are concerned, the learned Counsel submitted that the petitioners have been making representations to the Government time and again and, therefore, the delay and laches by themselves would not disentitle the petitioners from getting the relief if they are otherwise entitled to.

6. Mr. Coutinho, the learned Counsel appearing on behalf the petitioners in Writ Petition No.322/01 adopted the arguments advanced by Mr. Menezes and submitted that the petitioners are also entitled to the pay scale of Rs.1640-2900.

7. Mr. Kantak, the learned Advocate General opposing the petitions on behalf of the Government submitted that the petitioners are guilty of gross, unexplained delay and laches and, therefore, on this count only, the petition deserves to

be dismissed. He further submitted that the petitioners have not established any right to get the pay scale of Rs.1640-2900 and the reliance placed by the petitioners upon the Judgments in the case of Bharat Naik and ors (supra) and Ajay Jadhav's case (supra) is totally misplaced. He further submitted that in both the petitions upon which reliance has been placed by the petitioners, the Circular dated 20th November, 1990 was challenged; whereas in the present petitions there is absolutely no challenge by the petitioners to the said Circular and, therefore, the petitioners are bound by the Circular dated 20th November, 1990 in terms of which the petitioners are entitled to the pay scale of Rs.1400-2600. He further submitted that the petitioners cannot be considered to be Grade I Teachers in terms of Rule 78 of the Goa School Education Rules, 1986 (“the Rules” for short) since the petitioners are not having the requisite qualifications required in terms of the said Rule. He further submitted that the Judgment of this Court in Bharat Naik's case and the Judgment of the Apex Court in Anjay Jadhav's case are based on the fact situation existing in those cases and, therefore, the petitioners are not entitled to rely upon the said Judgments as laying down any ratio in favour of the petitioners' contention. He submitted that there are 31 teachers in private aided higher secondary schools in the State

Goa and nine teachers in Government Schools who are similarly placed as that of the petitioners, getting the pay scale of Rs.1400-2600 and they have not challenged the grant of pay scale of Rs.1400-2600 to them and that grant of any relief to the petitioners would impose extra heavy financial burden on the Government of Goa since even those teachers who have not challenged the pay scale granted to them would have to be given the same pay scale as that of the petitioners in the event the petitioners are given the pay scale of Rs. 1640-2900. In support of his submissions, the learned Advocate General relied upon the following Judgments :

(1)State of Orissa v. Sri Pyarimohan Samantaray and ors., AIR 1976 SC 2617;

(2)M/s. Faridabad Ct. Scan Centre v. D.G. Health Services and ors., AIR 1997 SC 3801;

(3)Union of India and anr. v. International Trading Co. and another., (2003) 5 SCC 437;

(4)Government of W.B. v. Tarun K. Roy and ors., (2004) 1 SCC 347;

(5)ICICI Bank and anr. v. Municipal Corpn. of Greater Bombay and anr., (2005) 6 SCC 404;

(6)Sangham Tape Co. v. Hans Raj, (2005) 9 SCC 331.

8. We have considered the submissions on behalf of the petitioners and the respondents. We have also perused the Judgments relied upon by the learned Advocate General. The short question which arises for our consideration is whether the petitioners are entitled to the pay scale of Rs. 1640-2900.

9. Since the petitions have been opposed on the ground of gross, unexplained delay and laches, we shall first deal with the submission made by the learned Advocate General that the present petition deserves to be dismissed on this count alone. In the present case, the petitioners have been granted pay scale of Rs.1400-2600 from the time they are appointed during the academic years 1989-90 and 1990-91 in different higher secondary schools. The petitions have been filed in the year 2001. It is the contention of the petitioners that they have made several representations, some of which have been rejected while some of which have not been replied and, therefore, according to the petitioners, the petitions are not guilty of gross, unexplained delay and laches. We are unable to accept the submission made on behalf of the petitioners. The learned Advocate General is justified in placing reliance upon the Judgment of the Apex Court in the cases of **Government of**

W.B. v. Tarun K. Roy and ors. (supra) and **State of Orissa v. Sri Pyarimohan Samantaray and ors. (supra)**. In the case of **Government of W.B**. (supra), the Apex Court held that the respondents who had filed the petition after about 16 years were not entitled to the relief on the ground of delay. In the case of State of Orissa (supra), the petition challenging supersession which was filed after 11 years of rejection of the representation against the supersession was allowed by the High Court. The Apex Court while setting aside the Judgment of the High Court held that there was no satisfactory explanation to the inordinate delay and, held that, therefore, the petition filed after eleven years ought to have been dismissed because of inordinate and unexplained delay and consequently, dismissed the writ petition. In the present case, the petitioners have not given any satisfactory explanation as to why they did not challenge the action of the respondents in not granting the pay scale as claimed by them for a period of almost eleven years. In our view, mere fact that some of the representations made by the petitioners were not replied by the Government is not sufficient to hold that the petitioners are entitled to file the present petitions challenging the action of the respondents almost after a period of eleven years. We are, therefore, of the opinion, that the petitioners are not entitled to any relief on the

ground of gross, unexplained delay and laches. However, since the petitions have been also argued on merits, we propose to deal with the petitions on merits.

10. It is the submission of the petitioners that in terms of Circular dated 30th June, 1988, the petitioners are entitled to the pay scale of Rs.1640-29000; whereas according to the respondents, clarifications were sought from NCERT after the Circular dated 30th June, 1988 was issued and after getting the clarification from NCERT, it was decided to rationalise the pay scales of vocational teachers as per qualifications possessed by them and consequently, the Circular dated 20th November, 1990 was issued prescribing the qualifications and scales for the vocational courses and in terms of the said Circular, the petitioners are entitled to the pay scale of Rs.1400-2600. In order to find out whether the petitioners are entitled to the pay scale claimed by them in terms of the Circular dated 30th June, 1988, it would be appropriate to quote the said circular. The said circular reads as follows :

"No.DE/VOC/NCERT/15/88-89/559
Government of Goa,
Directorate of Education,
Panaji, Goa.
Date 30th June, 1988.

C I R C U L A R

The Head of Higher Secondary Schools and Higher Secondary Units of Colleges are hereby informed that the qualifications prescribed by NCERT for Gr. I Teachers and Part Time teachers to be appointed for various vocational subjects introduced in your school under the vocationalisation of Education at + 2 stage are furnished in the Annexure enclosed for guidance and necessary action. The said qualifications are worked out and approved by NCERT and may be considered for the appointment of teachers as said above.

The pay scale prescribed for the Gr. I teachers with above qualifications is 1640-2900. In this regards, it is informed that if the schools do not get the qualified candidates as prescribed inspite of their efforts made by notifying the vacancies in the local Employment Exchange, Local Newspapers and All India Newspapers, the schools are permitted to appoint less qualified candidates available, in a lower scale for a fixed tenure of three or six months, as a stop gap arrangement with prior approval of this Department. Rest of the recruitment procedure will be the same as laid down in the Education Rules.

Sd/-
(S.V. Kurade)
Director of Education."

At this it would be appropriate to refer to the relevant Rule 78 of

the Rules. Rule 78, in so far as it is relevant to appreciate the controversy, reads as under :

> "78. *Minimum qualifications for the appointment of teaching staff*. - The qualifications for the recruitment/promotion of the teaching staff in the recognised schools, whether aided or not shall be as prescribed in the following table which is subject to change in future on the recommendation of the Advisory Board or the directives of the Central Government to fall in line with the National Educational Policy.

T A B L E

subject		Qualification for Direct recruitments		Qualification for promotees	Pay scale to revision.
Sr. No.	Name of the Post	Upper age limit.	Qualification		
1	2.	3.	4.	5	6.
1.					
2.					
3.					
4.					
5.	Gr. I Teacher /Sr. Instructor	35 years.	(i) A Master's Degree in the subject and	Asst.Teacher/` Jr. Instructor with 3 years post training service in the school/Pry.Trs. Training Institute and possessing qualifications prescribed to the direct recruit in Col. No.(4).	1640-2900

			(ii) A Degree in Education/Teaching; Failing which, A 2nd class Master's Degree in the subject. (he shall obtain his B.Ed. Degree at his own cost within 5 years and he shall not be confirmed without training qualification).		
6.	Asst. Trs./Jr. Instructor (i.e Trained graduate Trs.)	30 years	(i)A degree from a recognised University	Undergraduate teachers working in the secondary schools having 3 yrs. service in the grade and possessing qualifications prescribed for direct recruitment in Col. No.(4), failing which an undergraduate teacher possessing a Degree from a recognised university and a Diploma in Education (2 yrs. Course) and having 5 yrs. experience out of which at least 3 years experience after obtaining Diploma in education.	1400 - 2600
			(ii) A Degree in Education/ Teaching from a recognised University.		

In terms of Rule 78, different Qualifications are prescribed for Grade I Teacher/Senior Instructor in Clause (5) of the Rules,

whereas qualifications prescribed for Asst. Teacher/Junior Instructor are those in Clause (6) of the Rules. In the present case, admittedly, the petitioners are not having qualifications prescribed for Grade I Teacher/Senior Instructor. The respondents are justified in placing reliance upon Rule 78 of the Rules in support of their stand that the petitioners are not entitled to the pay scale claimed by them. We find considerable merit in the submission of Mr. Kantak that the petitioners have also not challenged the Circular dated 20th November, 1990 and as such, they are not entitled to the pay scale of Rs.1640-2900. We are, therefore, unable to accept the submission made on behalf of the petitioners that in terms of the Circular dated 30th June, 1988, the petitioners are entitled to the pay scale of Rs.1640-2900.

11. The petitioners have also placed heavy reliance upon the Judgment of this Court in Bharat Naik and others case (supra) as well as the Judgment of the Apex Court in Ajay Jadhav's case (supra). In so far as Bharat Naik's case is concerned, the learned Advocate General has sought to distinguish the said Judgment on several grounds. Firstly, he invited our attention to the fact that in the said Judgment Circular dated 20th November, 1990 was challenged by the

petitioners in Writ Petition No.61/91 and the same was quashed by this Court in so far as the petitioners in the said writ petition were concerned. Secondly, he invited our attention to the fact that the petitioners in Bharat Naik's case were appointed pursuant to the advertisements issued by the management in which the pay scale was mentioned as Rs. 1640-2900 and the petitioners were also given the said scale for some time. In this fact situation, this Court held that there was a concluded contract between the petitioners on one side and the Director of Education and the Principals of the Junior Colleges on the other side and, therefore, the respondents could not have reduced the pay scale from Rs.1640-2900 to Rs.1400-2600. In the present case, in none of the advertisements, pursuant to which the petitioners applied and appointed, the pay scale was mentioned and they were appointed in the pay scale of Rs.1400-2600. Nor the petitioners were paid the pay scale of Rs.1640-2900, which was proposed by the managements of different schools in which the petitioners were appointed. On the contrary, all the petitioners were placed in the pay scale of Rs.1400-2600 and the request of the managements of the different schools to grant pay scale of Rs.1640-2900 was rejected. Therefore, the ratio of the Judgment in the case of Bharat Naik (supra) is not attracted to the present petitions.

The learned Advocate General is justified in placing reliance upon the Judgment of the Apex Court in U**nion of India and anr. v. International Trading Co. and another (supra).** The Apex Court in para 13 of the said Judgment has observed thus :

> ".... What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

12. The Apex Court in **ICICI Bank and anothe**r (supra), referred to para 11 of another leading case of the Apex Court in the case of **CIT v. Sun Engg. Works (P) Ltd.,;** (1992) 4 SCC 363, which reads thus :

> " ... it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law"

> declared by the Supreme Court. The Judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out works or sentences from the judgment divorced from the context of the question under consideration by the Court."

13. In the case of **Sangham Tape Co**. (supra), the Apex Court held that the fact situation obtained in one case cannot be said to be a precedent for another.

14. In view of the above decisions of the Apex Court and in the light of the discussion supra, we are unable to hold that the petitioners are similarly placed as that of the petitioners in the case of Bharat Naik. Therefore, we hold that the Judgment in the case of Bharat Naik does not advance the case of the petitioners any further. In so far as the Judgment of the Apex Court in Ajay Jadhav's case is concerned, the Apex Court held that there was a clear case of discrimination since the teachers having same qualifications as that of Ajay Jadhav

were getting higher pay scale and the Apex Court in the said Judgment held that there was no reply to the submission made on behalf of the appellant as to how the teachers with same qualifications as that of the petitioners were getting higher scale of Grade I Teacher. Careful reading of the Judgment of the Apex Court in Ajay Jadhav's case discloses that the same was primarily based upon the fact that the respondents before the Apex Court were not in a position to satisfy the Apex Court the basis for giving higher pay scale to other teachers who were similarly placed as that of the petitioners while denying the same to the petitioner therein. In present case, the Director of Education has filed affidavit and placed material before us to justify their action of refusing the higher pay scale to the petitioners. Having regard to the material placed by the Director of Education, we are satisfied that the action of Government in refusing higher pay scale to the petitioners cannot be termed as either arbitrary or resulting in discrimination. Having regard to the ratio laid down by the Supreme Court in the decisions referred to herein above, we are unable to hold that the Judgment of the Apex Court in Ajay Jadhav's case is squarely applicable to the case of the petitioners. The Judgment in Ajay Jadhav's case (supra) was rendered by the Supreme Court on the basis of the material

placed before it which established the plea of discrimination urged by the petitioners therein. We, therefore, hold that the Judgment of the Apex Court in Ajay Jadhav's case also does not come to the rescue of the petitioners to get any relief from this Court.

15. In the result, therefore, we hold that the petitioners are not entitled to any relief not only on the ground of gross unexplained delay and laches, but also on merits. Consequently, the petitions are dismissed. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

SSM.